

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

UNIFACE B.V., a Dutch Limited Liability Company,)
v.)
SYSMEX AMERICA, INC.,)
Defendant.)
Plaintiff,)
Case No. 20-cv-6478)

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff Uniface B.V. (“Uniface”), for its complaint for copyright infringement against Sysmex America, Inc. (“Sysmex”), states as follows:

NATURE OF ACTION

1. This is an action arising under the copyright laws of the United States. Uniface is a global software company that offers a copyrighted development and deployment platform that software developers use to write commercial software applications (the “Uniface Software Platform”). Uniface permits certain of those software developers—under the terms of its agreements with the developers—to, in turn, sublicense the deployment portion of the Uniface Software Platform to the developers’ customers as part of the developers’ custom software applications.

2. Sysmex is a subsidiary of a former licensee of Uniface (*i.e.*, Sysmex Corporation). Sysmex’s license to use the Uniface Software Platform terminated as of January 29, 2020, and all of Sysmex’s post-termination maintenance rights to maintain its clients’ software created using or incorporating the Uniface Software Platform terminated as of July 29, 2020.

3. Yet Sysmex admittedly continues to use the Uniface Software Platform and support its clients’ use of the Uniface Software. Uniface brings this action against Sysmex for such on-going,

post-termination unauthorized use, and inducement of its customers' continued unauthorized use, of Uniface's copyrighted software platform.

PARTIES

4. Uniface is a foreign limited liability corporation organized under the laws of the Netherlands.

5. On information and belief, Sysmex is a Delaware corporation with its principal place of business in Lincolnshire, Illinois.

JURISDICTION AND VENUE

6. This action arises under the copyright laws of the United States. This Court has original jurisdiction over copyright claims (under 17 U.S.C. § 101, *et seq.*) pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Venue is proper under 28 U.S.C. §§ 1391(b)(1)-(3) because Sysmex resides in this District, the alleged copyright infringement that forms the basis of the Complaint is actively occurring in this District, and Sysmex is subject to general and specific personal jurisdiction of this Court.

FACTUAL BACKGROUND

A. The Parties and their Prior VAR License Agreement.

8. Uniface is a privately held software company headquartered in Amsterdam with offices worldwide. Its development tools—the Uniface Software Platform—help software developers quickly and efficiently adapt to new technologies and user preferences and permit more effective development and deployment methodologies than other development platforms.

9. Uniface holds valid copyrights in the Uniface Software Platform, which are registered with the United States Copyright Office under copyright registration numbers: TX0001434087, TX0004717243, TX0005005452, TX0005226249, TX0007977063,

TX0008048368, TX0008183233, TX0008183393, TX0008287014, TX0008383243, TX0008384931, TX0008445094, TX0008445102, TX0008711369, TX0008711793, TX0008711795, TXu001263231, TXu001266670, TXu001268251, TXu001291464, TXu001344251, TXu001631221, TXu001631463, and TXu001775198 (the “Uniface Copyrights”).

10. Under the terms of a standard VAR license agreement, Uniface’s customers pay Uniface a fee to license the Uniface Software Platform for development, testing, and demonstration purposes. Uniface’s customers then pay a separate, on-going royalty for each of their customers or end users to whom they provide software developed using the Uniface Software Platform. This royalty payment, typically equal to a percentage of their revenues from each customer that licenses such applications, permits Uniface’s customers to sublicense the deployment portion of the Uniface Software Platform to their end users. At all times, Uniface remains owner of the Uniface copyrighted software and the Copyrights that were embedded in any software developed by a licensee and deployed to an end user.

11. On January 29, 2002, Compuware N.V. (a predecessor-in-interest to Uniface) entered into a VAR license agreement with Sysmex Corporation, a Japanese corporation.

12. Pursuant to that VAR license agreement, Sysmex was given access to the Uniface Software Platform, including the Uniface Copyrights.

13. The VAR license agreement generally defined different types of licenses, including: (1) Development Licenses, which were granted to Sysmex Corporation for its own internal use and for the development of software intended for use by customers or end users; and (2) Deployment or Runtime Licenses (including Application Specific Runtime Licenses and Generic Runtime Licenses), which were required for customers of Sysmex, or end users, to use the software

developed by Sysmex. In addition to the royalties paid for these licenses, Sysmex was required to pay annual maintenance fees on all licenses.

14. Upon information and belief, Sysmex Corporation is a parent corporation of Sysmex.

15. According to its website, Sysmex distributes and supports automated in vitro diagnostic hematology, flow cytometry, technology solutions, coagulation and urinalysis analyzers, reagents and information systems for laboratories and healthcare facilities in North and South America.

16. Sysmex developed its Work Area Management (“WAM”) software using the Uniface Software Platform. Sysmex’s WAM-product is a so-called middleware product: a software component that connects one software application to another.

17. Uniface is aware of at least 515 laboratories, hospitals, and universities throughout the United States that Sysmex distributed Uniface licenses to.

B. The Termination of the VAR License Agreement.

18. Uniface provided Sysmex notice of termination of the VAR license agreement on September 24, 2019, which meant that the agreement terminated on or around January 29, 2020. Sysmex maintained a limited right to use the Uniface Software platform to maintain its existing customer software for six months, *i.e.*, until July 29, 2020. All of Sysmex’s rights to use and/or distribute software created using or incorporating the Uniface Software Platform terminated as of July 29, 2020.

19. Under the VAR license agreement, Sysmex was required to destroy all copies and parts of the Uniface Software Platform upon termination, except for copies and parts required for the ongoing maintenance of Sysmex’s existing customers, which could be kept through July 29, 2020.

20. Sysmex never provided, and has specifically refused to provide, proof that said copies and parts of the Uniface Software Platform were destroyed.

21. Additionally, Sysmex was required to destroy the copies and parts of the Uniface Software Platform that were required for the ongoing maintenance of existing customers by July 29, 2020.

22. Sysmex never provided, and has specifically refused to provide, proof that said copies and parts of the Uniface Software Platform that were required for the ongoing maintenance of existing customers were destroyed by July 29, 2020.

23. Sysmex does not dispute that the VAR license agreement is terminated.

24. Uniface and Sysmex, and Symex's parent Sysmex Corporation, are involved in litigation in Belgium over the amount of royalties paid during the term of the now-terminated contract. This case does not overlap with the Belgium litigation. Uniface is not raising here any contractual issues, including failure to pay royalties or any other alleged contractual breaches.

C. Uniface Learns that Sysmex Continues to use Uniface's Copyrights.

25. Uniface has recently learned that Sysmex continues to use the Uniface Software Platform to develop and upgrade its software and software being used by its customers or end users. And Sysmex continues to use Uniface's United States copyrights to do so.

26. For example, in the aforementioned litigation in Belgium, Sysmex admitted that it continues to use Uniface's copyrights in the United States without authorization.

27. Specifically, Sysmex admitted that it continues to "provide adaptive maintenance (*i.e.* adaptations, such as debugging, to keep the existing WAM product usable in a changed or changing environment) to the existing End Users."

28. Thus, Sysmex, and its customers, continue to use, modify, alter, upgrade, recompile, and add features to its software without authorization. Such actions are forbidden by copyright law.

COUNT I
COPYRIGHT INFRINGEMENT (17 U.S.C. § 501)

29. Uniface incorporates paragraphs 1-28 as if fully set forth herein.
30. Uniface owns all right, title and interest in and to the Uniface Copyrights and has standing to sue for enforcement of those copyrights. From the date of creation through the date of filing, Uniface has complied in all respects with the Copyright Act.
31. Sysmex has infringed, and continue to infringe, upon Uniface's copyright in the Uniface Software Platform by continuing to internally use, and by continuing to distribute, the Uniface Software Platform after July 29, 2020.
32. Sysmex has not obtained permission, consent, or license from Uniface for the continued reproduction, distribution, use, modification, upgrade, recompiling, or adding features to the Uniface Software Platform or works created using and incorporating the Uniface Software Platform.
33. Sysmex's end users have infringed, and continue to infringe, upon Uniface's copyright in the Uniface Software Platform by using the software Sysmex created using and/or incorporating the Uniface Software platform following July 29, 2020, including the deployment portions of the Uniface Software Platform, without authorization for such use.
34. Uniface did not authorize, permit, or consent to Sysmex's use of the Uniface Software Platform without a license, after July 29, 2020.
35. Sysmex has infringed on Uniface's exclusive rights by:
 - a. Reproducing the works in copies, in violation of 17 U.S.C. § 106(1);
 - b. Preparing derivative works, in violation of 17 U.S.C. § 106(2); and/or
 - c. Redistributing copies of the works to the public by sale or other transfer of ownership, or by rental, lease or lending, in violation of 17 U.S.C. §§ 106(3).

36. Sysmex's acts of infringement were done, and now continue to be done, with knowledge that such actions constitute an infringement of Uniface's exclusive rights and are, therefore, willful within the meaning of 17 U.S.C. § 501. Uniface is entitled to damages and Sysmex's profits in an amount to be proven at trial.

37. Alternatively, Uniface is entitled to the maximum statutory damages in the amount of \$150,000 with respect to each work infringed, or for such other amounts as may be proper under 17 U.S.C. § 504.

38. Uniface is entitled to recover its attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

39. As a direct and proximate result of the foregoing acts and conduct, Uniface has sustained and will continue to sustain substantial, immediate and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, Sysmex will continue to infringe Uniface's rights in the Uniface Software Platform. Uniface is entitled to preliminary and permanent injunctive relief.

COUNT II
CONTRIBUTORY COPYRIGHT INFRINGEMENT (17 U.S.C. § 501)

40. Uniface incorporates paragraphs 1-39 as if fully set forth herein.

41. Following the termination of the VAR agreement and the six-month permitted maintenance period, Sysmex continues to facilitate the distribution of the Uniface Software Platform by incorporating it into its own software and distributing the software to its customers or end users.

42. By continuing to make its software available to its customers, Sysmex knowingly and systematically enabled, induced, caused, facilitated, or materially contributed to their

unauthorized reproduction and use of the Uniface Software Platform in violation of the copyright laws of the United States.

43. Sysmex has not obtained permission, consent, or license from Uniface for the reproduction, distribution, use, modification, upgrade, recompiling, or adding features to the Uniface Software Platform that is deployed to Sysmex's end users.

44. Sysmex's end users have infringed, and continue to infringe, upon Uniface's copyright in the Uniface Software Platform by using the software Sysmex created using and/or incorporating the Uniface Software platform following July 29, 2020, including the deployment portions of the Uniface Software Platform, without authorization for such use.

45. Sysmex knew when it reproduced and distributed the Uniface Software Platform—and/or software created using and or incorporating the Uniface Software Platform—following July 29, 2020, that its customers or end users would use, reproduce, and/or distribute the Uniface Software Platform without Uniface's authorization and without a license.

46. Sysmex directly profited from the transmission of the Uniface Software Platform to its customers and end users since they paid, and continue to pay, Sysmex for the software.

47. The acts of infringement of Sysmex were willful, in disregard of and with indifference to the rights of Uniface.

48. As a direct and proximate result of the infringements by Sysmex, Uniface is entitled to damages and its profits in an amount to be proven at trial.

49. Alternatively, Uniface is entitled to the maximum statutory damages in the amount of \$150,000 with respect to each work infringed, or for such other amounts as may be proper under 17 U.S.C. § 504.

50. Uniface is entitled to recover its attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

51. As a direct and proximate result of the foregoing acts and conduct, Uniface has sustained and will continue to sustain substantial, immediate and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, Sysmex will continue to infringe Uniface's rights in the Uniface Software Platform. Uniface is entitled to preliminary and permanent injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Uniface demands judgment in its favor and against Sysmex on Counts I-II, including, but not limited to, an Order:

- A. Enjoining Sysmex, their agents, subsidiaries, representatives, members, affiliates, and all persons active in concert or in participation with them from:
 1. Infringing Uniface's copyrighted works;
 2. Encouraging or facilitating others to infringe Uniface's copyright works; and
 3. Continuing to use the Uniface Software Platform in violation of the copyright laws of the United States;
- B. Awarding actual or statutory damages for infringement and willful infringement under 17 U.S.C. § 504, as appropriate;
- C. Awarding Uniface compensatory damages it has suffered in an amount to be proven at trial;
- D. Awarding Uniface punitive and/or exemplary damages for all claims for which such damages are authorized;
- E. Awarding Uniface its costs and attorneys' fees in this action pursuant to 17 U.S.C. § 505 and other applicable laws;

- F. Awarding pre- and post-judgment interest at the maximum legal rate and costs;
- G. Awarding Uniface the profits Sysmex and its customers or end users received by use of the Uniface Software Platform; and
- H. Awarding such other and further relief as this Court deems just and proper.

JURY DEMAND

Uniface demands a trial by jury on all issues so triable.

Dated: October 30, 2020

Respectfully submitted,

UNIFACE B.V.

By: /s/ Stephen J. Rosenfeld
One of their attorneys

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